

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

DAVID KEITH MARQUAR
Plaintiff

v.

**OFFICER CHRIS ALLEN, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY AS A DULY
COMMISSIONED POLICE OFFICER FOR THE
CITY OF WAVELAND, MS; POLICE CHIEF
JAMES A. VARNELL, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS A DULY
COMMISSIONED POLICE OFFICER FOR THE
CITY OF WAVELAND, MS; DAVID GARCIA,
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY AS MAYOR OF THE CITY OF
WAVELAND, MS; CITY OF WAVELAND,
UNKNOWN JOHN AND JANE DOES A - Z**
Defendants

CIVIL DOCKET No.: 1:11-cv-00054
JUDGE: HON. LOUIS GUIROLA, JR.
MAGISTRATE: HON. ROBERT H. WALKER

**PLAINTIFF'S MOTION PURSUANT TO F.R.A.P. 4(A)(6)
TO REOPEN THE TIME TO FILE AN APPEAL**

NOW INTO COURT, through undersigned, newly-retained counsel, comes the Plaintiff herein, **David Keith Marquar**, who appears herein pursuant to F.R.A.P. 4(a)(6) and who files this Motion to Reopen the Time to File an Appeal, requesting hereby to have the already-lapsed deadline for filing a Notice of Appeal in the above-captioned matter extended, expanded, enlarged, and and/or otherwise generally reopened and reinstated, and who, with respect to same, does hereby allege, aver, depose, attest, state, and claim as follows:

1. Plaintiff David Keith Marquar seeks an out-of-time appeal of this Court's April 2, 2013, Judgment [Rec. Doc. 50], upon a showing that all three (3) enumerated factors within F.R.A.P. 4(a)(6)(A-C) are satisfactorily met.
2. As is set forth with greater particularity in the accompanying Memorandum Brief in

Support, Plaintiff Marquar shows that he did not receive “notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment ... sought to be appealed,” either “within 21 days after entry” as required by F.R.A.P. 4(a)(6)(A) or at any other time.

3. Mr. Marquar’s present motion is thus timely-filed “within 180 days after the judgment ... is entered,” where, as stated, Mr. Marquar has never received F.R.C.P. 77(d)’s requisite notice. F.R.A.P. 4(a)(6)(B).

4. Finally, Mr. Marquar shows “that no party would be prejudiced” be the reopening of the time to file an appeal in this matter where the term “prejudice” is defined to mean “some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal, consequences that are present in every appeal.” Advisory Committee Notes to F.R.A.P. 4(a)(6), 1991 Amendment.

5. Thus, and for all the foregoing reasons, together with those set forth in greater detail within Plaintiff’s accompanying Memorandum Brief in Support, Mr. Marquar now appears before this Honorable Court seeking an admittedly extraordinary remedy, but he does so upon the basis of facts which reflect a manifest injustice will otherwise occur if Mr. Marquar is not afforded an extension of time to file a Notice of Appeal.

WHEREFORE, and for all the foregoing reasons, Plaintiff David Keith Marquar now respectfully moves this Honorable Court to grant his Motion to Reopen the Time to File an Appeal upon a showing that all three (3) enumerated factors within F.R.A.P. 4(a)(6)(A-C) are satisfactorily met and Plaintiff is otherwise entitled to the said relief in these premises.

It Is So Moved.

SIGNATURE OF COUNSEL AND CERTIFICATE OF SERVICE ON NEXT PAGE.

ALEXANDER & ALEXANDER, P.C.
Attorneys and Counselors at Law

By: /s/ Brian Bienvenu Alexander, Esq.

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Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Motion to Reopen the Time to File an Appeal has been served upon the following counsel of record herein:

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I FURTHER CERTIFY that the foregoing service was effected by delivery of same into the Electronic Case Filing (ECF) system of the Court, the filing of which, when completed, is sufficient to provide notification unto all counsel, from the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, on this the 2nd day of October, 2013.

/s/ Brian Bienvenu Alexander, Esq.

BRIAN BIENVENU ALEXANDER, ESQ.